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required in the *Bell Atlantic/NYNEX Order*. The required performance measurements for which BellSouth has provided no data in its application are listed below.

A. Average Installation Intervals

26. In order to show parity for ordering and provisioning, BellSouth must show that it is provisioning CLEC orders within the same amount of time that it provisions the same or comparable services for its own local retail customers. Accordingly, the Commission found in its *Ameritech Michigan Order* that comparative performance data for "average installation intervals" is absolutely "critical" and "fundamental" to any showing of nondiscriminatory performance in support of a Section 271 application.⁴² Similarly, in its *Bell Atlantic/NYNEX Order*, the Commission required the merged BOCs to monitor and report their "average completed interval" measured from the time that a confirmed order was received by the BOCs to the actual order completion date.⁴³

27. Notwithstanding the clear need for data on average installation intervals established in the Commission's prior orders, BellSouth fails to provide this information. This omission precludes any finding of nondiscriminatory performance for CLECs, for as the Commission made clear in its *Ameritech Michigan Order*, "[w]ithout data on average

⁴² See *Ameritech Michigan Order*, ¶¶ 164-171, 185, 212.

⁴³ See *Bell Atlantic/NYNEX Order*, App. D, Measure 9. See also *Friduss S.C. Aff. (DOJ)*, ¶¶ 58, 60 ("Average Provisioning Interval . . . is a critical performance measurement").

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installation intervals comparing [the BOC's] retail performance with the performance provided to competing carriers, the Commission is unable to conclude that [the BOC] is providing nondiscriminatory access to OSS functions for ordering and provisioning."⁴⁴

28. Nor does the data produced by BellSouth on "service order intervals"⁴⁵ fill this gap. Contrary to BellSouth's representation, its data on "service order intervals" does *not* reflect "the actual intervals for provisioning various services."⁴⁶ Quite the contrary, as defined by BellSouth, "service order interval" is simply the period of time between the issuance of a service order by BellSouth and the original due date assigned by BellSouth.⁴⁷ It does not in any way reflect the date on which the order was actually completed by BellSouth.⁴⁸ BellSouth's "service order intervals" are thus nothing more than BellSouth's scheduled time

⁴⁴ *Ameritech Michigan Order*, ¶ 167. See also *id.*, ¶ 171 ("By failing to provide [average installation intervals] in this application, Ameritech has failed to meet its evidentiary burden"); DOJ S.C. Evaluation, App. A, p. A-33 ("For this reason alone [failure to provide actual installation intervals], BellSouth has failed to satisfy its evidentiary burden").

⁴⁵ See Stacy PM Aff., ¶ 45 & Exs. WNS-11 & WNS-12..

⁴⁶ Stacy PM Aff., ¶ 45.

⁴⁷ See Stacy PM Aff., ¶ 45.

⁴⁸ Nor is this information captured in BellSouth's data on the percentage of due dates met, which provides no information about either the average interval for completing orders missing their due dates, or the average interval for completing orders that were reported as completed within the scheduled interval. See also *Ameritech Michigan Order*, ¶ 168 (data on due dates missed is not sufficient to show equivalent access).

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for provisioning the order. As the Department of Justice has now confirmed, therefore, BellSouth's claim that it is meeting the Department of Justice's request for data on actual installation intervals by producing data on "service order intervals" is obviously incorrect.⁴⁹ Nor is there any way one could calculate average installation intervals from the data provided by BellSouth.⁵⁰

B. Comparative Performance Data For Unbundled Network Elements

29. In its *Ameritech Michigan Order*, the Commission also explained the need for BOCs to provide "comparative performance data for unbundled network elements" with their Section 271 applications.⁵¹ Moreover, the Commission stated that such comparative

⁴⁹ See DOJ S.C. Evaluation, App. A, p. A-34 (an examination of BellSouth's data on service order interval "quickly reveals" that it "is not the same as an installation interval"). See also Friduss S.C. Aff. (DOJ), ¶ 60 (BellSouth's service order interval data does not show average installation interval because "it measures the interval from service order issuance to *original due date*, not *completion date*") (emphasis in original). Although BellSouth purported to provide some data on average installation intervals with Mr. Stacy's reply affidavit for South Carolina, that data shows that BellSouth's performance for CLECs was substantially inferior to its performance for itself for all of the principal types of orders, including both residential and business non-dispatch "C" and "N" orders. See Stacy S.C. PM Reply Aff., Ex. WNS-2, p. 1.

⁵⁰ See DOJ S.C. Evaluation, App. A, p. A-34-35 ("the percentage of provisioning appointments met . . . is not sufficient to demonstrate parity, even when combined with data demonstrating that provisioning appointments are being assigned on a non-discriminatory basis" because it does not show the actual installation intervals).

⁵¹ *Ameritech Michigan Order*, ¶ 212 (BOCs must include "comparative performance information for unbundled network elements" with any Section 271 application sufficient to "permit comparisons" between the BOC's performance for CLECs and its performance for its

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data should include comparisons of the BOC's performance of analogous activities or functions "even if the actual mechanism used to perform the function is different for competing carriers than for the BOC's retail operations."⁵² For example, the Commission pointed out that nearly all pre-ordering and maintenance and repair activities relating to unbundled network elements have retail analogues,⁵³ and the Commission stated that where the provision of unbundled local switching involves only software changes (such as an order to switch a customer over to the UNE platform), the appropriate comparison for parity purposes is the interval in which the BOC changes over end users between interexchange carriers, an activity that requires a similar

⁵¹ (...continued)

own retail operations). *See also id.*, ¶¶ 139-141; *Bell Atlantic/NYNEX Order*, App. C, p. 124 & App. D, Measures 3-9, 11-18 (requiring comparative performance data for unbundled network elements for all relevant ordering, provisioning and maintenance measures).

⁵² *Ameritech Michigan Order*, ¶ 139. *See also* Michigan PSC, p. 31 ("Although exact parity of operations may not exist on the retail and wholesale operations, instances which are substantially analogous should be utilized for purposes of comparison"). This approach was also proposed by NYNEX in Section 271 hearings in New York. *See* Affidavit of Matthew J. Coffey on behalf of New York Telephone Company, filed February 14, 1997, in *In re Application to the Federal Communications Commission by New York Telephone Co. for Authority to Provide In-Region InterLATA Services in New York*, N.Y. Pub. Serv. Comm'n Case No. 97-C-0271, p. 11 ("For unbundled network elements, NYNEX New York will compare the actual performance for provisioning and maintaining unbundled elements to an interconnector to a corresponding category of service that NYNEX New York provides to its end users").

⁵³ *See Ameritech Michigan Order*, ¶ 140.

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software change.⁵⁴ Without such comparative performance data, there is simply no way to determine whether the access provided to CLECs is equivalent to the access that BellSouth provides to itself.

30. Notwithstanding the Commission's clear statements about the need for comparative performance data for the provisioning and maintenance of unbundled network elements, BellSouth makes no attempt to provide any such comparative data with its application. Instead, BellSouth simply takes the position that "no direct comparison to BellSouth retail services is possible."⁵⁵ Consistent with this position, BellSouth's performance data for its provisioning and maintenance of unbundled loops to CLECs contains no comparative data for BellSouth's performance of the same or analogous functions for itself.⁵⁶

31. In lieu of providing actual comparative data on BellSouth's performance of the same or analogous functions for itself, BellSouth presents a set of UNE target installation intervals which it states "will be used to finalize the UNE provisioning and

⁵⁴ See *Ameritech Michigan Order*, ¶ 141; *Local Competition Order*, ¶ 421 ("we require incumbent LECs to switch over customers for local service in the same interval as LECs currently switch end users between interexchange carriers"); 47 C.F.R. § 51.319(c)(1)(ii).

⁵⁵ BellSouth Brief, p. 73. See also Stacy PM Aff., ¶ 44.

⁵⁶ See Stacy PM Aff., Ex. WNS-10, pp. 3-4.

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maintenance intervals" for CLECs under its contracts.⁵⁷ These are the same UNE target installation intervals that BellSouth unilaterally announced in June 1997, and which AT&T evaluated and rejected as wholly "unacceptable" on June 30, 1997.⁵⁸ Since then, BellSouth has neither substantiated nor changed its proposed UNE intervals. Moreover, BellSouth has informed AT&T that its proposed UNE installation intervals are based on the assumption that UNE elements will be ordered by CLECs only for use with a CLEC's own switch. And those intervals assume that the component parts will *always* involve design work by BellSouth, and they make no distinction between work involving dispatch and work requiring only central office software or billing database changes.⁵⁹ Each of these assumptions is invalid since UNEs can also be ordered for use with BellSouth's switches, and no design work or dispatch should be required with many UNEs. Notwithstanding these obvious flaws, BellSouth has stated that

⁵⁷ Stacy PM Aff., ¶ 27 & Ex. WNS-7. BellSouth also submits a "recently finalized" set of UNE maintenance target intervals. See BellSouth Brief, p. 72; Stacy PM Aff., Ex. WNS-8.

⁵⁸ See Letter from Becky Bennett, AT&T, to Terrie Hudson, BellSouth, dated June 30, 1997, with AT&T proposed UNE installation intervals noted on attached Letter from J.M. Baker, BellSouth, to All CLECs, dated June 1, 1997 (Attachment 6). In accordance with the requirement of their contract that the parties attempt to reach agreement on appropriate UNE provisioning intervals, AT&T submitted a complete set of AT&T's proposed UNE provisioning intervals to BellSouth on July 9, 1997, and that issue was discussed, but not resolved, between the parties at a meeting held on August 5, 1997. See AT&T-BellSouth Agreement, Attachment 12, p. 3 (attached to Stacy PM Aff. as Ex. WNS-2); Letter from Becky Bennett, AT&T, to Terrie Hudson, BellSouth, dated July 9, 1997 (Attachment 7).

⁵⁹ See Letter from Becky Bennett, AT&T, to Gary Romanick, BellSouth, dated August 5, 1997 (Attachment 8).

it will make no changes in its announced UNE provisioning intervals until the market for UNEs is more fully developed.⁶⁰ In these circumstances, BellSouth's UNE provisioning intervals should be recognized for what they are -- *proposed* provisioning intervals based on obviously incorrect assumptions that are highly disadvantageous to CLECs. Those proposed UNE provisioning intervals are no substitute for actual data on BellSouth's performance of analogous provisioning functions for itself.

C. Service Order And Provisioning Accuracy

32. As part of the process of determining whether the petitioning BOC has complied with its nondiscrimination duties, the Commission has also stated that BOCs should present performance data on "service order accuracy" and "provisioning accuracy" as part of any application under Section 271.⁶¹ Similarly, the AT&T-BellSouth Agreement identifies "service orders provisioned as requested" as one of the provisioning measurements that BellSouth agreed to make under the contract.⁶² Parity in this area is critical because end users

⁶⁰ *Id.*

⁶¹ *See Ameritech Michigan Order*, ¶ 212.

⁶² *See AT&T-BellSouth Agreement*, Attachment 12, Sec. 2.6 (attached to Stacy PM Aff. as Ex. WNS-2). The Agreement further states that the parties were to review appropriate information and develop a proposal to provide this measurement no later than August 1, 1997. *Id.* Although AT&T submitted a proposed service order accuracy measurement to BellSouth on September 8, 1997, BellSouth has never responded to that proposal. *See* Letter from Becky Bennett, AT&T, to Gary Romanick, BellSouth, dated September 8, 1997 (Attachment 9).

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will attribute any inaccuracies in the provisioning of their orders by BellSouth to the CLEC. It is essential, therefore, that BellSouth's error rate for CLEC-initiated orders be no greater than its error rate for its own orders. To make this determination, a comparison should be made between the original order sent to BellSouth by the CLEC and the account profile following completion of the order. If BellSouth provides a completion notice to the CLEC with sufficient information, the completion notice can be compared to the order. If the actions requested on the order are the same as the actions specified on the completion notice, the order has been completed without error. This measure permits an assessment to be made of BellSouth's accuracy in processing and provisioning CLEC service orders, which can then be compared to BellSouth's performance in provisioning its own orders.

33. Despite the Commission's specific request for information regarding the accuracy with which CLEC orders are processed and provisioned, and BellSouth's agreement to measure provisioning accuracy under the AT&T-BellSouth Agreement, BellSouth has provided no such performance data with its application.⁶³

34. The other measures provided by BellSouth are inadequate to measure the accuracy and completeness of BellSouth's provisioning of CLEC orders. Although BellSouth's measure of the percentage of installations on which trouble is reported within 30 days of

⁶³ See also DOJ S.C. Evaluation, App. A, p. A-35 (failure of BellSouth to provide any measure of service order quality is a "significant" omission).

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installation may possibly be indirectly related to provisioning accuracy, there are a host of other reasons for new service failures that are wholly unrelated to provisioning accuracy. On the other hand, a wrong feature installed correctly does not necessarily generate a customer trouble report within 30 days. The same is true where a feature is not installed at all. Instead, these situations may result in a call to the CLEC business office and the issuance of a new order to rectify the situation. Although both of these inaccurate order processing problems would be likely to generate significant customer dissatisfaction with the CLEC, neither would be reflected in the performance measurements provided by BellSouth.⁶⁴

D. Held Orders

35. BellSouth has also failed to provide any data regarding its performance with respect to "held orders," another performance measurement specifically requested by the

⁶⁴ In its *Bell Atlantic/NYNEX Order*, the Commission also required the companies to monitor and report the percentage of order rejections caused by BOC error or omission. *See Bell Atlantic/NYNEX Order*, App. D, Measure 5. There should be minimal rejections caused by BOC errors. Although BellSouth provides no data on order rejections, in his testimony on "order flow through," Mr. Stacy asserts that "in July, August, and September, CLECs caused errors represented 50%, 87%, and 82% of the total errors respectively." Stacy OSS Aff., ¶ 112. Mr. Stacy provides no factual basis for this assertion other than "BST analysis." Taking his claim at face value, however, this means that 50%, 13%, and 18% of the total errors in July, August, and September respectively were caused by BellSouth errors -- a substantial number of errors in light of Mr. Stacy's further claim that over 61% of CLEC orders contained errors in those three months. *See* Stacy OSS Aff., Ex. WNS-41. Moreover, although Mr. Stacy stated in his South Carolina OSS affidavit that BellSouth would continue to make changes to its systems "until the error rate improves to more acceptable levels" (Stacy S.C. OSS Aff., ¶ 111), BellSouth's error rate actually got worse, increasing from 13% in August to 18% in September.

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Commission in its *Ameritech Michigan Order*.⁶⁵ The held order interval measure compares the average delay beyond the committed due date for CLEC orders that have not been completed at the close of the reporting period with the average delay beyond the committed due date for BellSouth orders. Additional held order measures provide the percentage of orders held for more than 15 days and more than 90 days, both of which can be computed using subsets of the data used to compute the average held order interval. By comparing the results for CLECs and BellSouth, the held order measure provides an important indication of whether or not CLECs are being discriminated against by a lack of capacity committed to the processing and provisioning of CLEC orders.⁶⁶

36. Notwithstanding the Commission's clear statements about the need for held order data, BellSouth has not provided any held order performance data with its application on the ground that "BellSouth does not believe this measurement is necessary."⁶⁷

⁶⁵ See *Ameritech Michigan Order*, ¶ 212.

⁶⁶ See also *Friduss S.C. Aff. (DOJ)*, ¶ 58, p. 21 ("Orders Held . . . is an important measure in determining whether the BOC prioritizes new facility work in a nondiscriminatory basis"). "Held orders" is not the same as due date commitments not met. Rather, the "held orders" measure focuses on the length of time required for the provisioning of CLEC orders held beyond the due date, not just the fact that BellSouth failed to meet the due date.

⁶⁷ *Stacy S.C. PM Reply Aff.*, filed November 14, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121, ¶ 16. Mr. Stacy also concedes that "BellSouth does not have this data currently available." *Id.* See also *DOJ S.C. Evaluation*, App. A, p. A-35 (failure of BellSouth to provide any
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E. Timeliness Of Firm Order Confirmations

37. The Commission has made clear that parity requires that information regarding order status, such as firm order confirmations ("FOCs"), order rejections, jeopardy notices, and service order completion notices, must be made available to CLECs as quickly as such order status information is available to BellSouth's own customer service representatives. For example, in its *Bell Atlantic/NYNEX Order* the Commission required the merged entity to monitor and report its average order confirmation time, average time for order rejection notification, and average time for order completion notification.⁶⁸ Similarly, in its *Ameritech Michigan Order* the Commission relied upon data showing Ameritech's failure to provide timely firm order confirmations and order rejections to CLECs in rejecting Ameritech's application.⁶⁹

38. Customers, and especially business customers, expect their local service provider to closely monitor the status of their orders, to have order status information readily available for them, and to notify them immediately whenever due dates and other commitments are changed. Order confirmations are also required by CLECs before they are able to perform

⁶⁷ (...continued)
measure of held orders is a "significant" omission).

⁶⁸ See *Bell Atlantic/NYNEX Order*, App. D, Measures 3, 4 & 6.

⁶⁹ See *Ameritech Michigan Order*, ¶¶ 172, 186-188.

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other functions for their customers such as submitting changes to the original order. Unless they receive prompt notice of the status of their orders, therefore, CLECs will be disadvantaged in their efforts to compete.

39. Although BellSouth committed itself on May 9, 1997, to measure the time it takes to return FOCs to AT&T under the AT&T-BellSouth Agreement,⁷⁰ and BellSouth has been providing limited data in state proceedings regarding its performance in returning FOCs to CLECs since at least mid-July 1997,⁷¹ BellSouth provides no data on its FOC performance to the Commission with its Louisiana application. Moreover, contrary to BellSouth's argument,⁷² this omission cannot be excused on the ground that CLECs have set different performance targets for the return of FOCs in view of the fact that all three of the

⁷⁰ See Stacy PM Aff., ¶ 17; Attachment 12 to AT&T-BellSouth Agreement, p. 4 (attached to Stacy PM Aff. as Ex. WNS-2).

⁷¹ See, e.g., Stacy Rebuttal Testimony, filed July 11, 1997, in *In re Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Georgia Pub. Serv. Comm'n Docket No. 6863-U, p. 7.

⁷² See Stacy S.C. PM Reply Aff., filed November 14, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121, ¶ 12.

performance measurement agreements submitted by BellSouth establish a 24 hour target for the return of FOCs.⁷³

40. BellSouth's reluctance to disclose its FOC performance data to the Commission may be explained by the fact that BellSouth's own data clearly show that its performance for CLECs is obviously inadequate. Prior to filing its application for Louisiana, BellSouth delivered performance data for its return of firm order confirmations to AT&T pursuant to the AT&T-BellSouth Agreement for both August and September 1997.⁷⁴ BellSouth's performance data for August show that it was returning FOCs to AT&T within 24 hours only 62 percent of the time, and that it was returning FOCs to AT&T within 4 hours only 43 percent of the time.⁷⁵ This means that in August BellSouth was meeting its generous 24-hour minimum contractual performance obligation less than two-thirds of the time.

⁷³ See AT&T-BellSouth Agreement, Attachment 12, p. 4 (attached to Stacy PM Aff. as Ex. WNS-2) (requiring BellSouth to measure the percentage of FOCs returned within 24 hours); Amendment No. 1, p. 4, to Time Warner-BellSouth Master Interconnection Agreement (attached to Stacy PM Aff. as Ex. WNS-4) (requiring that FOCs be returned within 24 hours at least 95 percent of the time); US South-BellSouth Performance Measurement Agreement, p. 4 (attached to Stacy PM Aff. as Ex. WNS-5) (same as AT&T-BellSouth Agreement).

⁷⁴ See, e.g., Stacy PM Aff., ¶ 17 ("BellSouth delivered to AT&T the August results on September 14, 1997, for the initial set of agreed to measurements").

⁷⁵ BellSouth Firm Order Confirmation data for August 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (Attachment 10).

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41. BellSouth's performance in returning FOCs to AT&T on a timely basis got even worse in September. Thus, BellSouth's performance data for September show that it was returning FOCs to AT&T within 24 hours only 56 percent of the time, and that it was returning FOCs to AT&T within 4 hours only 39 percent of the time.⁷⁶

42. In addition, despite the Commission's request for comparative performance data in its *Ameritech Michigan Order*, BellSouth has failed to report any data on its performance of the same or analogous functions for its own local retail operations -- data that is essential to any determination of parity.⁷⁷ Although BellSouth's own agents do not receive firm order confirmations in the same format as CLECs because their orders are not submitted through the same interfaces, they do receive the same information about the status of their orders from BellSouth's systems. In order to establish that parity is being provided to CLECs, therefore, BellSouth must also measure and report the length of time that it takes for BellSouth's service order processing systems to return the same order status information to

⁷⁶ BellSouth Firm Order Confirmation data for September 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (Attachment 11).

⁷⁷ See *Ameritech Michigan Order*, ¶ 187 ("We are troubled by Ameritech's failure to submit comparative data indicating how long it takes Ameritech to receive the equivalent of a FOC for its own orders"), ¶ 212 (BOC "should provide, as part of a subsequent section 271 application, . . . comparative performance data . . . [to] permit comparisons with [the BOC's] retail operations").

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BellSouth's own customer service representatives. Without that comparative information, no determination regarding parity can be made.

43. Furthermore, while a 24-hour target interval may be an appropriate minimum performance requirement for invoking the remedial provisions of a contract, it clearly does not measure parity of performance. BellSouth's own retail representatives should receive order confirmation (or rejection) information from BellSouth's systems within seconds of their submission of an order.⁷⁸ As a result, BellSouth's own representatives can confirm orders with the customer, or change the order to avoid rejection, while the customer is still on the line. By contrast, even if FOCs were always returned to CLECs within 24 hours, the CLEC would still not receive this information while the customer was on-line, and would thus be precluded from providing comparable service to customers. BellSouth's 24-hour contractual performance standard for the return of firm order confirmations to CLECs, therefore, does not provide parity.

44. In addition, the manner in which BellSouth has been measuring its performance for the delivery of FOCs renders any claim that its performance is adequate almost meaningless. Although BellSouth has represented to AT&T that it issued FOCs within

⁷⁸ The Commission has stated that "the appropriate retail analogue for a FOC would be the time that elapses between when [a BOC] order is placed into the legacy systems and when the order is recognized as a valid order by the legacy systems." *Ameritech Michigan Order*, ¶ 187 n.479.

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24 hours for 56 percent of AT&T's orders during September, BellSouth's FOC measurements include only those "orders that flow through mechanically and entirely without human intervention."⁷⁹ FOCs for orders that are handled in that fully mechanized fashion, however, should be returned to CLECs almost instantaneously, not hours later.⁸⁰ A 24-hour performance standard for the return of FOCs only has relevance for CLEC orders that are processed manually. By limiting its FOC measurement to those AT&T orders that are processed by BellSouth without any manual intervention -- a limitation that has no basis anywhere in the AT&T-BellSouth Agreement -- while using a 24-hour target, BellSouth's FOC performance data cannot possibly establish the adequacy of its performance. Indeed, what is most amazing about BellSouth's FOC data is that for the limited class of orders included in BellSouth's measure, BellSouth did not meet its 24-hour target for the return of FOCs to AT&T 100 percent of the time.⁸¹

⁷⁹ Stacy PM Aff., Ex. WNS-3, p. 2. This exhibit to Mr. Stacy's affidavit is *not* a part of the AT&T-BellSouth Agreement and contains a number of statements by BellSouth, including the above description of how BellSouth computes the FOC return interval, to which AT&T has never agreed.

⁸⁰ *Cf. Ameritech Michigan Order*, ¶ 188 ("order rejection notices generated electronically . . . should be relatively instantaneous").

⁸¹ BellSouth's FOC measurement also provides a vivid illustration of the importance of full disclosure as to which operational results are included and which are excluded in the computation of each performance measurement. *See* Part IV.C.1, *infra*.

F. Timeliness Of Order Rejections

45. BellSouth's performance data is also inadequate because BellSouth has withheld its data on the timeliness of its transmission of order rejections to CLECs. Prompt notification of order rejections is essential to enable CLECs to know the status of their orders and to promptly make any changes that may be required for their resubmission to BellSouth. For this reason, the Commission relied on data regarding the lack of timely order rejection notices in rejecting Ameritech's application, and it required that the time for order rejection notification be monitored and reported in its *Bell Atlantic/NYNEX Order*.⁸²

46. Notwithstanding the clear need for performance data on the timeliness of order rejection notices and the fact that BellSouth reported such information to AT&T under the AT&T-BellSouth Agreement for two months prior to its application, BellSouth continues to withhold this data from the Commission. Nor is there any basis for BellSouth's excuse that CLECs have different performance targets for order rejections⁸³ in view of the fact that all

⁸² See *Ameritech Michigan Order*, ¶ 188; *Bell Atlantic/NYNEX Order*, App. D, Measure 4.

⁸³ See Stacy S.C. PM Reply Aff., filed November 14, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121, ¶ 12.

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three of the interconnection agreements submitted by BellSouth establish one hour as the minimum contractual requirement for notice of order rejections.⁸⁴

47. Once again the performance data that BellSouth has withheld from the Commission show conclusively that BellSouth is *not* providing adequate, much less equivalent, access to CLECs. The BellSouth data show that BellSouth was meeting its contractual performance obligation to provide order rejections to AT&T within one hour of the receipt of AT&T's order only 6 percent of the time in both August and September.⁸⁵ This poor performance reflects the fact that BellSouth, in violation of its contractual commitments to AT&T, still has not mechanized the process of sending order rejections to CLECs and is continuing to rely instead on manual notification of such rejections.⁸⁶ Since BellSouth's own

⁸⁴ See AT&T-BellSouth Agreement, Attachment 12, p. 5 (attached to Stacy PM Aff. as Ex. WNS-2) (requiring BellSouth to measure the timeliness of its delivery of order rejection notifications by reporting the percentage of "notice of reject or error status within 1 hour of receipt" of the order, including both paper and electronic rejection notices); Amendment No. 1, p. 4, to Time Warner-BellSouth Master Interconnection Agreement (attached to Stacy PM Aff. as Ex. WNS-4) (establishing 1 hour requirement for order rejection notices as BellSouth performance standard); US South-BellSouth Performance Measurement Agreement, p. 5 (attached to Stacy PM Aff. as Ex. WNS-5) (same as AT&T-BellSouth Agreement).

⁸⁵ BellSouth Error or Reject Status data for August 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (Attachment 12); BellSouth Error or Reject Status data for September 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (Attachment 13).

⁸⁶ As discussed in more detail in the Affidavit of Jay Bradbury of AT&T, BellSouth -- in violation of its contractual commitment to AT&T to provide AT&T with on-line information
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retail representatives should receive electronic order rejection notices "relatively instantaneous[ly]" from BellSouth's systems,⁸⁷ BellSouth's failure to meet even its one-hour contractual obligation -- a performance standard specifically established to apply to BellSouth's manual notification procedures⁸⁸ -- constitutes a clear failure to provide adequate performance for CLECs.

G. Timeliness Of Order Completion Notification

48. BellSouth's performance measurements are also deficient because BellSouth has provided no measure of timeliness for the return of service order completion notices to CLECs. This is a crucial deficiency. Once an order has been completed by BellSouth, an electronic feed should return a service order completion notice to the CLEC within minutes. Any delay in the return of service order completion notices has serious

⁸⁶ (...continued)

exchange for service order errors and rejections "no later than March 31, 1997" (AT&T-BellSouth Agreement, Section 28.6.4) -- still has not programmed its systems to provide electronically generated order rejection notices to CLECs.

⁸⁷ *Ameritech Michigan Order*, ¶ 188. BellSouth's failure to provide any actual comparative performance data regarding the average length of time it takes for its systems to notify BellSouth's own personnel that an order has been rejected constitutes an additional reason why BellSouth has failed to meet its burden of demonstrating that parity is being provided to CLECs. *See id.*, ¶¶ 139-140, 212.

⁸⁸ *See* AT&T-BellSouth Agreement, Section 28.6.4.1 (establishing 1 hour performance standard for service order rejection notices "until this [electronic notice] capability is available").

consequences for AT&T's ability to provide local service to its customers. Until AT&T receives a service order completion notice, it does not know that the customer is in service, and it is unable to begin billing the customer for service or to address any maintenance problems experienced by the customer. Thus, as the Commission recognized in requiring performance data on the average time for service order completion notifications in its *Bell Atlantic/NYNEX Merger Order*, prompt order completion notifications are an essential part of nondiscriminatory performance.⁸⁹

H. Jeopardies

49. In order to ensure that CLECs receive timely notice of jeopardy situations when BellSouth determines that it will be unable to complete an order on the committed due date, BellSouth should measure and report the average length of its jeopardy notice interval (*i.e.*, the time remaining prior to the committed due date) for both CLECs and its own retail operations so that CLECs will be able to give timely notice to their customers that the original due date will not be met.⁹⁰ Similarly, in order to gauge whether BellSouth's commitments to CLECs are as reliable as its commitments to its own retail operations, comparative data should be provided on the percentage of total orders processed that are

⁸⁹ See *Bell Atlantic/NYNEX Order*, App. D, Measure 6.

⁹⁰ See Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 1.

jeopardized during the reporting period. BellSouth offers no performance measurements at all relating to jeopardies.

I. Bill Quality And Accuracy

50. Notwithstanding the fact that the Commission has specifically requested BOCs to submit comparative performance data for "bill quality and accuracy,"⁹¹ and that BellSouth is also obligated under its contract with AT&T to monitor and report such billing data,⁹² BellSouth has failed to submit any performance measurement to the Commission for bill quality or accuracy with its application in this case.⁹³

51. Furthermore, AT&T has in fact experienced a number of problems with the billing information provided by BellSouth, including repeated and significant errors in the recorded usage data provided by BellSouth.⁹⁴ AT&T's experience, therefore, squarely refutes

⁹¹ See, e.g., *Ameritech Michigan Order*, ¶¶ 212, 221, 140.

⁹² See AT&T-BellSouth Agreement, Attachment 12, pp. 6-8 (attached to Stacy PM Aff. as Ex. WNS-2) (requiring BellSouth to monitor and report the timeliness, accuracy and completeness of recorded usage billing data sent to AT&T).

⁹³ See also DOJ S.C. Evaluation, App. A, p. A-35 (failure of BellSouth to provide any measure of billing accuracy and completeness is a "significant" omission).

⁹⁴ See, e.g., Letter from Rebecca Bennett, AT&T, to Gary Romanick, BellSouth, dated September 19, 1997 (Attachment 14). Although BellSouth represented to AT&T in its September 14, 1997 submission of performance data under the AT&T-BellSouth Agreement that the recorded usage data delivered to AT&T in August 1997 was 100 percent accurate, BellSouth apparently made that claim by simply equating passing the internal edits established
(continued...)

any claim by BellSouth that it is providing parity of performance to CLECs with respect to billing matters.⁹⁵

J. Responsiveness To CLEC Calls

52. Although Mr. Stacy states that BellSouth has established two "Local Carrier Service Centers" in Birmingham and Atlanta to serve as contact points for the ordering of services by CLECs,⁹⁶ BellSouth's proposed performance measurements include no measure pertaining to the responsiveness of BellSouth's personnel in those centers to calls from CLECs, such as the average time for its Local Carrier Service Centers to answer calls from CLECs or call abandonment rates for CLEC calls to its Local Carrier Service Centers.⁹⁷

⁹⁴ (...continued)

by BellSouth with perfect performance without regard to the errors subsequently identified by AT&T in usage data which had to be returned to BellSouth. *See id.*

⁹⁵ Although BellSouth provides some data on the timeliness of its transfer of customer billable usage data with Mr. Stacy's OSS Affidavit, that data indicates that it takes nearly twice as long, on average, for BellSouth to deliver usage records to AT&T (3.52 days) as it does to deliver the same usage records to itself (1.86 days). *See* Stacy OSS Aff., ¶ 107 & Ex. WNS-53, pp. 3, 6 & 9. This is not "substantially the same" performance.

⁹⁶ *See* Stacy PM Aff., ¶ 4.

⁹⁷ *See* Stacy PM Aff., Ex. WNS-1. *Compare Ameritech Michigan Order*, ¶ 164 n.410 (noting that Ameritech provided data regarding the percentage of calls to service and repair centers not answered within interval); Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 4.

53. This omission is not cured by the fact that some very limited data on these matters can be found in one of documents offered for another purpose with Mr. Stacy's OSS Affidavit,⁹⁸ for that document not only contains insufficient data on the answering of CLEC calls, it contains no comparative information on BellSouth's performance for its own retail operations -- data that is essential to any determination regarding parity of performance. In any event, what even the limited data on BellSouth's response to CLEC calls demonstrate quite clearly is that BellSouth's performance for CLECs is inadequate. Thus, BellSouth's most recent information shows that the average delay on AT&T resale calls to the BellSouth's Local Carrier Service Centers was 58 seconds and that the call abandonment rate on calls from AT&T was as high as 20 percent.⁹⁹

54. BellSouth also fails to submit any performance data regarding BellSouth's response to CLEC maintenance calls. Although BellSouth is specifically required to measure "the average length of time it takes for the BellSouth repair bureau attendant to answer the telephone" under the AT&T-BellSouth Agreement,¹⁰⁰ that data has not been submitted to the Commission. Instead, BellSouth states that this maintenance measurement is

⁹⁸ See Stacy OSS Aff., ¶ 126 & Ex. WNS-46.

⁹⁹ See Stacy OSS Aff., Ex. WNS-46, p. 1.

¹⁰⁰ See AT&T-BellSouth Agreement, Attachment 12, p. 6 (Stacy PM Aff., Ex. WNS-2).

still "in process"¹⁰¹ or "under development."¹⁰² Furthermore, notwithstanding the clear language of the AT&T-BellSouth Agreement requiring the reporting of "average" answer time, BellSouth proposes instead to report in the future only the percentage of AT&T calls answered within 30 seconds¹⁰³ -- a reporting format that has been specifically found by the Commission to be inadequate to measure parity of performance because it can mask discriminatory behavior.¹⁰⁴

K. Operator Services And Directory Assistance

55. For both operator services and directory assistance calls where those services are provided by BellSouth, BellSouth should report its average speed to answer

¹⁰¹ Stacy PM Aff., Ex. WNS-6.

¹⁰² Stacy PM Aff., Ex. WNS-10, pp. 1 & 2. While BellSouth purports to report the average answer time for maintenance calls regarding residential unbundled loops for both CLECs and BellSouth (see Stacy PM Aff., Ex. WNS-3, pp. 3-4), it is apparent from the numbers submitted by Mr. Stacy that only some overall average performance figure for both CLECs and BellSouth is actually being reported because for each month BellSouth reports precisely the same average answer time for both CLECs and BellSouth.

¹⁰³ See Stacy PM Aff., Ex. WNS-3, p. 4.

¹⁰⁴ See *Ameritech Michigan Order*, ¶¶ 166, 168, 211 n.542, 234. This problem is discussed in more detail in Part IV.B of this affidavit.

measured from the initiation of ringing until the customer's call is answered.¹⁰⁵ BellSouth has provided no performance information for either of these services.¹⁰⁶

L. Network Performance

56. In order to establish that network performance parity is being provided to CLECs, BellSouth should also measure and report comparative performance data for such network performance measures as transmission quality, speed of connection, call completion rate, and call blockage.¹⁰⁷ In its *Ameritech Michigan Order*, for example, Commission stated that BOCs should provide comparative performance data for trunk blockage and call completion rates,¹⁰⁸ and in its *Bell Atlantic/NYNEX Order*, the Commission specifically

¹⁰⁵ See, e.g., *Ameritech Michigan Order*, ¶ 164 n.410 (stating that Ameritech provided a measure of "speed to answer for operator services" with its application); Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 2. This measurement is not addressed in the AT&T-BellSouth Agreement because AT&T plans to provide its own operator services and directory assistance as soon as BellSouth is able to provide the necessary customized routing.

¹⁰⁶ Mr. Stacy concedes this omission in his Reply Affidavit in the South Carolina case. See Stacy S.C. PM Reply Aff., filed November 14, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121, ¶ 17.

¹⁰⁷ See Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 2.

¹⁰⁸ See *Ameritech Michigan Order*, ¶¶ 224-245, 255.